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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

**[Docket No. FR-5536-P-01]
RIN 2502-AJ00**

**Federal Housing Administration (FHA) Approval of Lending Institutions and Mortgagees:
Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would streamline the FHA financial statement reporting requirements for lenders and mortgagees who are supervised by federal banking agencies and whose consolidated assets do not meet the thresholds set by their supervising federal banking agencies for submission of audited financial statements (currently set at \$500 million in consolidated assets). HUD's regulations currently require all supervised lenders and mortgagees to submit annual audited financial statements as a condition of FHA lender approval and recertification. Through this proposed rule, in lieu of the annual audited financial statements, small supervised lenders and mortgagees would be required to submit the unaudited financial regulatory reports that align with their fiscal year ends and are required to be submitted to their supervising federal banking agencies. Small supervised lenders and mortgagees would only be required to submit audited financial statements if HUD determines that the supervised lenders or mortgagees pose heightened risk to the FHA insurance fund.

This rule does not impact FHA's annual audited financial statements submission requirement for nonsupervised and large supervised lenders and mortgagees. The rule also does not impact those supervised lenders and mortgagees with consolidated assets in an amount that

requires that lenders or mortgagees submit audited financial statements to their respective supervising federal banking agencies. Finally, HUD has taken the opportunity afforded by this proposed rule to make three technical changes to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees.

DATES: Comment Due Date: **[Insert date 60 days from the date of publication in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted

through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Richard Toma, Deputy Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW, Room P3214, Washington, DC 20024-8000; telephone number 202-708-1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background

As part of HUD's efforts to strengthen risk management of the FHA insurance funds, HUD published a final rule on April 20, 2010, entitled, "Federal Housing Administration: Continuation of FHA Reform—Strengthening Risk Management Through Responsible FHA-Approved Lenders" (75 FR 20718). The April 20, 2010, final rule increased the net worth

requirements for FHA-approved lenders and mortgagees, eliminated HUD's approval of loan correspondents, and amended the general approval standards for lenders and mortgagees. The goal of increasing the net worth requirements was to ensure that FHA-approved lenders and mortgagees are sufficiently capitalized. To monitor compliance with the net worth requirements, the April 20, 2010, final rule requires all lenders and mortgagees to provide annual audited financial statements within 90 days of their fiscal year ends as a condition of FHA approval and recertification. The requirement for the submission of annual audited financial statements applies to all FHA-approved lenders and mortgagees, irrespective of their net worth. Interested readers should refer to the preamble of the April 20, 2010, final rule for additional information regarding the risk management amendments to the FHA program requirements.

II. This Proposed Rule

A. Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees

Since publication of the April 20, 2010, final rule, HUD has determined that the FHA requirement for all supervised lenders and mortgagees to submit annual audited financial statements may prove to be prohibitively expensive for small supervised lenders and mortgagees who wish to participate in FHA programs. While HUD takes its counterparty risk management responsibilities seriously, HUD seeks to balance its management of risk with the execution of its mission. In order to ensure that FHA products and programs remain available in the communities served by small supervised lenders and mortgagees, HUD proposes through this rule to modify its annual audited financial statements reporting requirement for these institutions.

Lenders and mortgagees supervised by the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); and the National Credit Union Administration (NCUA) (collectively the "federal banking agencies"), are required to submit

audited financial statements to their respective supervising federal banking agencies where the lenders' or mortgagees' consolidated assets meet or exceed the minimum thresholds established by those federal banking agencies; which thresholds are all currently \$500 million or more in consolidated assets and are currently codified at 12 CFR 363.1(a) and 12 CFR 715.4(c). Lenders and mortgagees whose consolidated assets for the applicable fiscal year are less than their supervising federal banking agency's threshold for submission of audited financial statements (hereinafter "small lenders and mortgagees") are required to submit unaudited financial regulatory reports. These unaudited financial regulatory reports currently include a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the "Call Report"), a consolidated or fourth quarter Thrift Financial Report, and a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310).

In an effort to be consistent with the financial reporting requirements designated by the supervisory federal banking agencies for small lenders and mortgagees, HUD will no longer require small supervised lenders or mortgagees to submit audited financial statements. Instead, HUD will require that small supervised lenders and mortgagees submit the unaudited financial regulatory reports that they are required to submit to their supervising federal banking agencies. HUD has determined that the financial regulatory reports required by the federal banking agencies contain sufficient information for HUD to ensure that small supervised lenders and mortgagees are suitably capitalized to meet potential needs associated with their participation in FHA lending programs, without the potentially prohibitive financial burden of preparing annual audited financial statements.

In order to manage the risk to the FHA insurance fund, HUD retains the right to request

additional financial documentation, up to and including audited financial statements, if HUD determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund. HUD has determined that the following factors are relevant, but not exhaustive, in determining if a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund: (1) failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender's or mortgagee's fiscal year end; (2) maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n); (3) reporting opening cash and equity balances that do not agree with the prior year's reported cash and equity balances; (4) experiencing an operating loss of 20 percent or greater of the lender's or mortgagee's net worth for the annual reporting period as governed by § 202.5(m)(1); (5) experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant; (6) undertaking significant changes to business operations, such as a merger or acquisition; and (7) other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

Consistent with the requirements of the federal banking agencies, HUD will continue to require audited financial statements for supervised lenders and mortgagees whose consolidated assets meet or exceed the threshold set by the federal banking agencies, presently located at 12 CFR 363.1(a) and 12 CFR 715.4(c) — currently \$500 million or more in consolidated assets. Because the asset threshold established by the federal banking agencies may change over time, this proposed rule references the regulations of the federal banking agencies instead of a numeric figure. HUD specifically seeks comments from small supervised lenders and mortgagees on whether they are required to provide annual audited financial statement to any other regulating body, such as a state agency.

B. Technical Amendments

HUD has taken the opportunity afforded by this proposed rule to make three conforming amendments to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees. These nonsubstantive amendments will codify existing requirements and correct a regulatory citation. The amendments are as follows:

1. Audited financial statement for large supervised lenders and mortgagees. The regulations at § 202.7(b)(4) require that nonsupervised lenders and mortgagees comply with HUD's uniform financial reporting standards codified in 24 CFR part 5, subpart H, and establish requirements governing the contents of the required audited financial statements. While the April 20, 2010, final rule codified the requirement that supervised lenders also submit audited financial statements, it did not specify that these statements must be submitted in accordance with the same requirements as those applicable to nonsupervised institutions under § 202.7(b)(4). Instead, HUD clarified via mortgagee letter that supervised lenders and mortgagees should comply with the audit requirements of § 202.7(b)(4).¹ This proposed rule would codify the mortgagee letter guidance by adding a new § 202.6(b)(4) to govern audited financial statements submitted by supervised lenders and mortgagees. Consistent with existing practice, the new provision mirrors the language of § 202.7(b)(4).

2. Technical correction to uniform financial reporting standards. The applicability section of HUD's uniform financial reporting regulations (§ 5.801) was not updated by the April 20, 2010, final rule. Accordingly, § 5.801(a)(5) of those regulations still provides that the uniform financial standards apply to "nonsupervised lenders, nonsupervised mortgagees, and loan correspondents." The April 20, 2010, final rule eliminated HUD's approval of loan

¹ See Mortgagee Letter 2009-31, issued on September 18, 2009, and available at: <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/2009ml.cfm>

correspondents and clarified that supervised lenders and mortgagees are also subject to the uniform financial reporting requirements. This proposed rule would make the conforming amendments to § 5.801(a)(5).

3. Technical correction to § 202.3(b). The regulation at § 202.3(b) incorrectly refers to the yearly verification report “required by § 202.5(n)(2).” As a result of other changes made by the April 20, 2010, final rule, the verification report requirement is now found in § 202.5(m). This proposed rule corrects the outdated citation.

III. Costs and Benefits of the Proposed Rule

The total cost savings from the reporting and recordkeeping burden for small supervised lenders and mortgagees would be approximately \$110,770. HUD currently has 1,471 approved supervised lenders and mortgagees who are required to submit annual audited financial statements, of which HUD approximates that 857 are small supervised lenders and mortgagees whom this rule will benefit. Under this proposed rule, small supervised lenders and mortgagees would no longer be required to complete and submit the Online Annual Financial Statements and Reports, but would instead submit an electronic copy of the unaudited financial regulatory report that aligns with their fiscal year end, as required by and submitted to their supervising federal banking agency. Currently it takes a lender or mortgagee 3 hours to complete the required Online Annual Financial Statements and Reports submission.² HUD estimates that this new requirement would take .25 hours per lender or mortgagee. Therefore, the burden on each lender or mortgagee would be reduced by 2.75 hours. The cost to the lender or mortgagee to complete the Online Annual Financial Statements and Reports is \$47 per hour.³ By submitting the unaudited financial regulatory report required by the lender’s or mortgagee’s supervised federal

² PRA Submission 2502-0005, http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200910-2502-005

³ Id.

banking agency, each small supervised lender or mortgagee would save \$129.25, resulting in a total industry savings for all 857 small entities of approximately \$110,770. HUD recognizes that additional savings may result for small supervised lenders and mortgagees who no longer complete annual audits as a result of this rule.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements for this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

This proposed rule would amend 24 CFR part 202. Part 202 currently contains the collection of information approved by OMB, and the OMB control number is 2502-0005. The collection title is, “HUD-FHA Title I/Title II Lender Approval, Annual Recertification, Noncompliance Forms, Reports, Ginnie Mae Issuer Approval, and Credit Watch Termination Reinstatement.” As proposed below, this rule would amend the collection of information currently required by “item n,” the online submission of annual audited financial statements by Title I and Title II nonsupervised lenders, supervised lenders and nonsupervised loan correspondents, of OMB control number 2502-0005 (hereinafter, Annual Audited Financial Statement). This proposed rule is estimated to reduce the burden in the existing information collection requirement as follows:

REPORTING AND RECORDKEEPING BURDEN:

Section Reference	Number of Annual Audited Financial Statement Respondents	Estimated Average Time for Requirement	Estimated Total Burden
<u>Current:</u> 24 CFR part 202 requirements	All Lenders 3,370 ⁴	3.00 hours	10,110 hours
<u>Proposed:</u> 24 CFR part 202 requirements	Large Supervised and all Nonsupervised Lenders . . 2,513 Small Supervised Lenders 857	3.00 hours .25 hours	7,753.25 hours (7,539 hours and 214.25 hours, respectively)
Percentage of Burden Change	Estimated net reduction of burden.		23%

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., by permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposed rule by name and docket

⁴ The current PRA states that 11,000 annual audited financial statements are collected, but loan correspondents are no longer HUD-approved and required to submit annual audited financial statements.

number (FR-5583-P-01) and must be sent to:

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503
Fax number: 202-395-6947

and

Reports Liaison Officer
Office of Housing
Department of Housing and Urban Development
451 7th Street, SW, Room 9128
Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by OMB in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal

them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Accordingly, HUD has determined that aligning FHA’s financial reporting requirements for small supervised lenders and mortgagees with the financial reporting requirements of the federal banking agencies eliminates unnecessary financial and administrative burdens posed by FHA’s current requirement to submit an audited financial statement, and thereby enhances the ability of small supervised lenders and mortgagees to participate in FHA programs. HUD has concluded that the federal banking agencies have controls in place through examination and monitoring to takeover institutions experiencing significant financial distress that pose a risk to depositors. Therefore, the information within the financial regulatory reports being provided to the federal banking agencies is comprehensive and provides the data necessary for FHA to analyze a small supervised lender’s or mortgagee’s net worth and assets to determine if financial risk is posed to the FHA fund. In a case where a small supervised lender or mortgagee shows sign of financial risk, HUD retains the right to request additional financial documentation, up to and including audited financial statements. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a

significant economic impact on a substantial number of small entities because the rule is specifically intended to ease the regulatory burden on small entities. The current regulations require full independent audited financial statements, over and above what is required by federal banking agencies in their oversight of these small supervised lenders and mortgagees. This proposed rule would bring HUD's reporting practices in line with that of the federal banking agencies and, as discussed above, reduce the cost of participating in FHA programs by releasing small supervised lenders and mortgagees from the requirement to submit annual audited financial statements. Instead the rule would require the submission of the unaudited financial regulatory report already required by the small supervised lender's or mortgagee's supervising federal banking agency.

Notwithstanding HUD's determination that this rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that would meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction. Nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the procedures governing the submission of financial reports by small supervised lenders and mortgagees applying to participate, or recertifying for participation, in FHA's single-family programs. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C.

4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities,

Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 5 and 202 to read as follows:

PART 5 – GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109-115, 119 Stat. 2936, and Sec. 607, Pub. L. 109-162, 119 Stat. 3051.

2. Revise § 5.801 paragraph (a)(5) to read as follows:

§ 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II supervised and nonsupervised lenders and mortgagees.

* * * * *

PART 202 – APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

3. The authority citation for part 202 continues to read as follows:

AUTHORITY: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

4. In § 202.3 paragraph (b), revise the citation to “§ 202.5 (n)(2)” to read “§ 202.5 (m)”.

5. Revise § 202.5 paragraph (g) to read as follows:

§ 202.5 General approval standards.

* * * * *

(g) Financial statements. Except as provided in § 202.6(c), the lender or mortgagee shall furnish to the Secretary a copy of its audited financial statements within 90 days of its fiscal year end, furnish such other information as the Secretary may request, and submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

* * * * *

6. In § 202.6, add new paragraphs (b)(4) and (c) to read as follows:

§ 202.6 Supervised lenders and mortgagees.

* * * * *

(b) * * *

(4) Audit report. Except as provided in paragraph (c) of this section, a lender or mortgagee must:

(i) Comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent

public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) Financial statements in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(B) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

(ii) Submit a report on compliance tests prescribed by the Secretary.

(c) Financial statements requirements for small supervised lenders and mortgagees.

(1) Definitions. For the purposes of this section, the following definitions apply:

(i) Federal banking agency means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the National Credit Union Administration; or any successor agency thereof.

(ii) Small supervised lender or mortgagee means a supervised lender or mortgagee possessing consolidated assets below the threshold for required audited financial reporting as established by the federal banking agency that is responsible for the oversight of that supervised lender or mortgagee.

(2) Financial statement requirements. Small supervised lenders and mortgagees shall not be subject to the requirement to submit a copy of an audited financial statement under § 202.5(g) and the audit report requirements under paragraph (b)(4) of this section. Small supervised lenders and mortgagees are required, within 90 days of their fiscal year end, to furnish to the Secretary the unaudited financial regulatory report—a consolidated or fourth quarter Report of

Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the “Call Report”), a consolidated or fourth quarter Thrift Financial Report, or a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310), or such other financial regulatory report as may be required—that aligns with the small supervised lender’s or mortgagee’s fiscal year end and that the small supervised lender or mortgagee is required to submit to their respective federal banking agency.

(3) Requirement for audited financial statement and other information based on determination of heightened risk to the FHA insurance fund. If the Secretary determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund, the lender or mortgagee must provide upon request, additional financial documentation, up to and including an audited financial statement, and other information as the Secretary determines necessary. The Secretary may determine that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund based upon, but not limited to, one or more of the following factors:

- (i) Failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender’s or mortgagee’s fiscal year end;
- (ii) Maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n);
- (iii) Reporting opening cash and equity balances that do not agree with the prior year’s reported cash and equity balances;
- (iv) Experiencing an operating loss of 20 percent or greater of the lender’s or mortgagee’s net worth for the annual reporting period as governed by § 202.5(m)(1);
- (v) Experiencing an increase in loan volume over the prior 12-month period, determined

by the Secretary to be significant;

(vi) Undertaking significant changes to business operations, such as a merger or acquisition; and

(vii) Other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

Dated: March 25, 2013

Carol J. Galante
Assistant Secretary for Housing –
Federal Housing Commissioner

[FR-5536-P-01]

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